

<b>000249</b> <b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) <b>2800675</b>	103 4/22
TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	3. DATE: March 12, 2008	
4. SUBJECT: <b>CONTINUING AGREEMENT WITH LATHAM &amp; WATKINS LLP. - MCGUIGAN V. CITY OF SAN DIEGO</b>			
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Todd Bradley - 533-6173 MS 59		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Lawrence Tomanek - 236-6220 MS 59	
		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
<b>8. COMPLETE FOR ACCOUNTING PURPOSES</b>			
FUND	See attached		
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT	\$75,000		
<b>9. ADDITIONAL INFORMATION / ESTIMATED COST:</b>  Authorize the City Comptroller to allocate and expend up to \$75,000 from the Public Liability Fund.			
<b>10. ROUTING AND APPROVALS</b>			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATOR	LAWRENCE TOMANEK	3/12/08
2	RISK MGMT	Valerie Tomanek	3/18/08
3	LIAISON OFFICE	ED PLANK	3/19/08
4	FIN MGMT	John Angel	3/25/08
5	AUD & COMP	Sam Hall	3/26/08
6			
7			
		DOCKET COORD: <input checked="" type="checkbox"/> COUNCIL LIAISON COUNCIL PRESIDENT <input checked="" type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION REFER TO: _____ COUNCIL DATE: 4.22.08	
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)			
Approve the Resolution to authorize the City Attorney to continue the agreement between the city of San Diego and Latham & Watkins LLP by an amount not to exceed \$75,000 for legal services as Outside Counsel for the sole purpose of representing the City in McGuigan v. City of San Diego, California Court of Appeals Case No. D050291.			
Authorize the City Auditor and Comptroller to allocate the cost using the FY2008 FTE Cost Allocation Table			
Authorize the City Auditor and Comptroller to allocate and expend an amount not to exceed \$75,000 per attached schedule.			
11A. STAFF RECOMMENDATIONS: <b>APPROVE THE RESOLUTION</b>			
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)  COUNCIL DISTRICT(S): COMMUNITY AREA(S): ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3) HOUSING IMPACT: OTHER ISSUES:			

**EXECUTIVE SUMMARY SHEET**

**DATE ISSUED:** March 12, 2008 **REPORT NO.:**

**ATTENTION:** COUNCIL PRESIDENT AND COUNCILMEMBERS

**ORIGINATING DEPARTMENT:** CITY ATTORNEY

**SUBJECT:** Authorizing the continued retention of Latham & Watkins LLP as counsel to prosecute *McGuigan v. City of San Diego*, California Court of Appeal Case No. D050291

**COUNCIL DISTRICT(S):** All

**CONTACT/PHONE NUMBER:** Todd Bradley, 619-533-6173 or Lawrence Tomanek 619-236-6220

**REQUESTED ACTION:**

Authorize the continued retention of Latham & Watkins LLP as counsel to prosecute California Court of Appeal Case No. D050291;

Authorizing the City Auditor and Comptroller to allocate and expend up to \$75,000 using the FY2008 FTE Cost Allocation Table:

**STAFF RECOMMENDATION:** Approve the Resolution

**EXECUTIVE SUMMARY:**

This lawsuit was originally brought by former City employee, William McGuigan, alleging that the City violated state and local law by under funding the City's public employee pension system. The City settled the case in 2006 by agreeing to pay \$173 million to SDCERS over a period of five years. The settlement has been partially funded through the securitization of future tobacco settlement revenue, transfers of actual tobacco settlement revenue receipts, and additional employee "pick-up" savings.

The San Diego Police Officers' Association (SDPOA) filed an appeal, challenging the Court's judgment approving the settlement. The City is defending the settlement on appeal against the SDPOA's challenge to its fairness.

**FISCAL CONSIDERATIONS:**

With this action the Council will authorize the City Auditor and Comptroller to expend up to \$75,000 using the FY2008 FTE Cost Allocation Table.

Latham & Watkins will proceed with the case on an hourly billing basis pursuant to the terms of their retainer agreement.

With this action the cumulative authorized for this matter is \$600,000; \$525,000 has been paid and \$19,593.32 in invoices have been received and are owing.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

The City Council on January 22, 2008, voted in Closed Session on Item CS-4, *McGuigan v. City of San Diego*, San Diego Superior Court Case No. GIC 849883 (California Court of Appeal Case No. D050291) and *Newsome, III, v. San Diego City Employees Retirement System, et al.*, San Diego Superior Court Case No. GIC 856841, to authorize an additional \$75,000 for legal fees to defend on appeal (briefs and oral argument). The motion was made by Council President Pro Tem Madaffer and the second by Councilmember Frye. The motion passed 6 to 0 with Council Members Faulconer and Atkins absent.

On May 30, 2006, Council authorized retention of Latham & Watkins and authorized an amount not to exceed \$250,000. (R-301517)

On July 30, 2007, Council authorized the continued retention of Latham & Watkins and authorized an additional amount not to exceed \$275,000, for a cumulative authorized amount of \$525,000. (R-302894)

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N.A.

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

Law firm of Latham & Watkins



Lawrence Tomanek, Chief Deputy City Attorney

**The City of San Diego**  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

000253

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING

AC 2800675

DEPT. NO.: 45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT											

FUND OVERRIDE ☐

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$75,000.00

Vendor: Latham & Watkins, LLP

Purpose: Authorize the City Attorney to continue the agreement with Latham & Watkins for legal services as Outside Counsel for the sole purpose of representing the City in McGuigan v. City of San Diego. Authorize the City Comptroller to allocate and expend the cost using the FY2008 FTE Cost Allocation Table.

Date: March 26, 2008 By: *Pam Walbert* 3/26/08

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
		SEE	ATTACHED								\$75,000.00
TOTAL AMOUNT											\$75,000.00

2008 FTE Allocation W/O MADS

Total Amount of AC/DP/Invoice:

**\$ 75,000.00**

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	81140	Public Liability	3501	4151	81141	73.90%	55,425.00
002	0	41400	730	Golf Course	100	4151	002150	0.89%	667.50
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	52.50
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.35%	262.50
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.77%	577.50
006	0	41200	753	Resource Management	010	4151	002000	0.16%	120.00
007	0	41200	754	Collection Services	020	4151	004229	0.08%	60.00
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.15%	112.50
009	0	41210	757	Collection Services	020	4151	004229	0.98%	735.00
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	22.50
011	0	41210	759	Resource Management	010	4151	002010	0.12%	90.00
012	0	41500	760	Water	163	4151	000163	7.91%	5,932.50
013	0	41506	776	MWWD-Administration	795	4151	776260	8.51%	6,382.50
014	0	41100	720	Airports	2000	4151	001101	0.18%	135.00
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.12%	840.00
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.42%	315.00
017	0	41300	1300	Developmental Service Enterprise	1111	4151	001110	4.36%	3,270.00
TOTAL								100.00%	75,000.00

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO CONTINUE THE AGREEMENT WITH LATHAM & WATKINS LLP IN AN ADDITIONAL AMOUNT UP TO \$75,000 TO PROVIDE LEGAL SERVICES IN CONNECTION WITH THE DEFENSE OF THE CASE OF MCGUIGAN V. CITY OF SAN DIEGO, AND NEWSOME, III, V. SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM, ET AL., AND AUTHORIZING THE AUDITOR AND COMPTROLLER TO EXPEND RELATED FUNDS

WHEREAS, litigation continues on appeal in the case of *McGuigan v. City of San Diego*, San Diego Superior Court Case No. GIC 849883 [California Court of Appeal Case No. D050291] and *Newsome, III, v. San Diego City Employees Retirement System, et al.*, San Diego Superior Court Case No. GIC 856841; and

WHEREAS, the defense of the aforementioned case involves a highly specialized area of law; and

WHEREAS, the firm of Latham & Watkins has the necessary skills and experience to assist the City in defense of this matter; and

WHEREAS, the Council of the City of San Diego has been briefed on the status of this matter in duly-noticed Closed Session on January 22, 2008; and

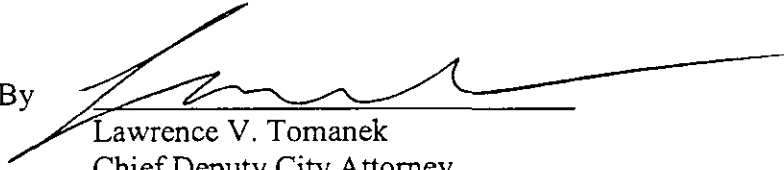
WHEREAS, the Council determined to continue retention of Latham & Watkins to assist the City Attorney in defense of this matter; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue retention of Latham & Watkins LLP for the provision of legal services in *McGuigan v. City of San Diego*, San Diego Superior Court Case No. GIC 849883 [California Court of Appeal Case No. D050291] and *Newsome, III, v. San Diego City Employees Retirement*

*System, et al.*, San Diego Superior Court Case No. GIC 856841, in an additional amount not to exceed \$75,000.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized to expend up to \$75,000 from the Public Liability Fund.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Lawrence V. Tomanek  
Chief Deputy City Attorney

LVT:jdf  
03/28/2008  
Or.Dept:CITY ATTY  
R-2008-847

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor